IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.783 OF 2003

1. Raghunath Bapu Gavade,]
   Age 29 yrs. Occ.Agriculture]
2. Babasaheb Bapu Gavade,]
   Age 36 yrs. Occ.Agriculture]
3. Krishna Bapu Gavade,]
   Age 33 yrs. Occ.Service]
4. Balu Shiva Gavade,]
   Age 41 yrs. Occ.Agriculture] ... Appellants.
   All residents of Ghunaki,] (Original
   Taluka Hatkanangale]Accd.Nos.1 to 4)
   [At present lodged in Kalamba]
   Jail, Dist.Kolhapur]]

versus

The State of Maharashtra] Respondent.

Mr.J.V.Patil with Mr.Sudatta Patil for Appellant Nos.1 to 3.

Mr.Yug Mohit Choudhari for Appellant No.4.

Ms.R.M.Gadhvi, APP, for the State.

CORAM : D.G.DESHPANDE

SMT.NISHITA MHATRE, JJ.

DATED : MAY 04, 2007.

JUDGMENT : [PER D.G.DESHPANDE,J]

1. Heard learned advocate Mr.J.V.Patil appearing for appellant/Original accused Nos.1 to 3, learned advocate Mr.Choudhari, appearing for appellant/original accused No.4 and learned APP Ms.Gadhvi appearing for the State.

2. This appeal is filed by all the four accused challenging their conviction under Sections 302 r/w 34, and 392 r/w 34 of the Indian Penal Code. Though single appeal is filed by all the accused and any one of the two advocates would have been required to argue because the defence of any of the accused was not conflicting, We permitted advocate Mr.Patil to add certain points in defence and in support of submissions made by advocate Mr.Choudhari.

3. Accused Nos.1, 2 and 3 are the brothers and accused No.4 is their cousin. They were residing in village Ghunaki, Tal.Hatkanangale, Dist.Kolhapur. Accused No.1 was the owner and conducted a panshop in Shivneri Chowk of village Ghunaki. He wanted to sell it. One Kashinath Sidh wanted to purchase the same and through mediation of deceased Kishor Bhanuse, a transaction was settled for Rs.31,000/- out of which Rs.5,000/- was paid on the very day of possession of that panshop was handed over by accused No.1 to Kashinath. This was about a month before the incident. It appears that there after accused No.1 changed his mind and wanted to revoke the contract. Two days after the contract, accused No.1 met Kashinath Sid (PW 16) and told him about his intention. Kashinath, in turn, told accused No.1 that they should consult the mediators i.e. Kishor and one Sardar.

4. For this reason, Kashinath was called to the house of Uttam Shid by accused Nos.1, 2 and 3. They asked him to take back the amount of Rs.5,000/- as they did not want to sell the panshop. They also warned Kashinath that otherwise he would not get single pai. Kashinath

insisted that mediator Kishor should be called. Therefore again there was a meeting after two days between accused Nos.1 to 4 and Kashinath at the house of Prabhakar Kurane. Deceased Kishor came there so also Sardar. The matter was settled on a condition that accused Nos. 1 to 4 should pay Rs.10,000/- to Kashinath and this amount was actually paid. However, for about two weeks thereafter deceased Kishor and Kashinath went to Vadgaon and brought iron Kiosk for panshop and kept it by the side of the panshop of accused No.1 in Shivneri Chowk, Ghunaki. On 19.6.02, this new panshop was started and, therefore, this was the cause of assault dated 8.7.02.

5. Deceased Kishor was S.T. conductor attached to Ichalkarnji S.T.Depot and he used to go to his duty in the afternoon. At about 11.a.m. Kishor started to go to his duty. He stopped at the panshop of Kashinath to purchase gutkha. Accordingly he purchased gutkha and was standing. At that time, accused Nos.1 and 4 were present in that chowk. They called Kishor and then Kishor was taken to the house of accused No.4 Balu which was nearby.

. In the mean time Hambirrao - the father of Kishor, who was also the bus conductor attached to Kolhapur Depot, sent a reminder to his son through his nephew Anil (PW 7), who was a school going boy. Anil came near panshop of Kashinath and, before he could convey the message to Kishor, he saw the accused taking Kishor. Therefore, Anil was waiting out side the house of accused No.4 Balu.

6. Then Anil saw that Kishor came running from the house of Balu - accused No.4 with bleeding injury on his left hand which was held in his right hand and Kishor was running in the direction of Mahadeo temple. Kashinath also saw Kishor running with injury being followed by accused Nos.1 and 4 armed with swords. When Kishor came near the panshop of Jagannath Shinde (PW 13), accused Nos. 1 and 4 assaulted him. At that time accused Nos.2 and 3 came from opposite direction with swords. They inflicted number of injuries on the head of Kishor. Kishor fell down. His skull was fractured and brain substance had come out.

7. Therefore, according to the prosecution, Anil (PW 7), who was the school going boy and, Kashinath (PW 16), are the eye witnesses so also Jagannath Shinde (PW 13) who had his panshop in the near vicinity. After their object was achieved in killing Kishor, the accused ran away with their weapons. They met one Ramesh Suryavanshi, who was going on his Bajaj-M-80 along with one Chougale. Accused No.1 stopped the moped, gave fist blows to both the occupants and snatched the moped. At that place accused Nos. 2 and 4 armed with swords came and joined accused No.1 and all three of them ran away. Accused No.3 took some bicycle and he also went in the same direction. Thereafter Anil (PW 7), Kashinath (PW 16), Jagannath (PW 13), went near Kishor. They felt that life was still clinging to Kishor, therefore, they called a rickshaw and removed Kishor to C.P.R. Hospital, Kolhapur where he was declared dead. The F.I.R. was lodged by Anil (PW 7). Investigation was started. But prior to that, it appears that inquest panchanama of dead body of Kishor was done at the hospital. During investigation spot panchanama was prepared, photographs were taken, blood scrapings were taken. The weapons were

recovered at the instance of accused so also their blood stained clothes and after receipt of C.A. reports, a charge sheet came to be filed. Needless to say that during investigation, the statements of witnesses were recorded.

8. The defence of the accused was of total denial and false implication.

9. The prosecution has examined 26 witnesses to prove its case. The trial Court believed the prosecution case and convicted the accused, as stated above. Hence this appeal.

10. According to the learned advocates Mr.Patil and Mr.Choudhary, appearing for the accused, when Kishor was allegedly murdered, there was no witness present at all and the so called eye witnesses of the prosecution are all got up witnesses. None of them has seen the assault and none of them could have seen the assault. They further urged that the investigating officer has deliberately, with the connivance of villagers and persons from the side of victim, had falsely implicated the accused. There are improbabilities in the evidence of eye

witnesses. The evidence of discovery under Section 27 of the Evidence Act is full of suspicion and, therefore, according to them, this is not a case to maintain conviction, but it is a case of clear acquittal.

11. The learned APP, on the other hand, contended that there are five eye witnesses in this case. All are reliable having no grudge to bear against any of the accused nor any reason to favour the victim. There are no improbabilities in their evidence and whatever appears as improbable in their conduct or unnatural in their conduct has been satisfactorily explained by them. She also contended that the prosecution has succeeded in proving the motive of the accused to kill Kishor. In addition, there was evidence of recovery and discovery of incriminating articles at the instance of accused and all those incriminating pieces of evidence were rightly considered by the trial Court in convicting the accused and, therefore, no interference is called for. These are, of-coruse, the general submissions of both the sides. We will deal with their specific

submissions at appropriate places.

12. P.W. 7 Anil Sadashiv Bhanuse - the school going boy is an important eye witness because he lodged the FIR to the police station. Before considering ocular evidence, it is necessary to consider the criticisms of the defence lawyers on the inquest panchanama and the FIR. The Inquest Panchanama is at Exhibit 14/C and the FIR lodged by Anil (PW 7) is at Exhibit 35. The inquest panchanama was commenced at 14.15 and was concluded at 15.15. Whereas the FIR was lodged at 15.15. As per Exhibit 14/C, the inquest panchanama, the body of Kishor was identified by his uncle Mahadeo Ramchandra Bhanuse, r/o Ghunaki. In the second para of Exhibit 14/C it is stated that the panchas and police were present. Uncle Mahadeo Bhanuse told that deceased Kishor was his nephew and working as a conductor at Ichalkarnji. On 8.7.02 Mahadeo Bhanuse had gone to his job at 12.00 noon at Vadgaon. He learnt that Kishor was assaulted by somebody with swords and was injured. He immediately went to his village where he learnt that Kishor was brought to the hospital. He came to the hospital and found that Kishor was dead.

13. Heavy reliance was placed upon this part of inquest panchanama and it was argued by both the learned advocates for the accused that if Mahadeo Bhanuse had learnt that somebody had assaulted Kishor, then this becomes very important and relevant because it shows that till 2.15 p.m. when the inquest panchanama was started, the names of assailants were not known to panchas who signed the inquest panchanama and to the P.S.I. of Shahupuri Police Station. Secondly it was contended that the inquest panchanama was prepared even before the FIR came to be registered and, therefore, if Mahadeo Ramchandra Bhanuse had stated to the police officers at the time of inquest panchanama that Kishor was assaulted by somebody, then that becomes the FIR and not one proved by Anil Bhanuse (PW 7) i.e. Exhibit 35 on record. Third contention in this regard was that if Mahadeo Bhanuse was not knowing the names of assailants, the FIR in which all the four accused are named becomes false and it becomes concocted document prepared only for the purpose of implicating the accused falsely.

14. We do not find any substance in any of the submissions. Because the assault took place at Ghunaki, deceased Kishor was brought to C.P.R. Hospital, Kolhapur, Mahadeo Bhanuse was called or was invited or was present at the Dead Body Room of C.P.R. Hospital, Kolhapur for the purpose of identification of body, whatever statement Mahadeo Bhanuse made and which was recorded in Exhibit 14/C, firstly is not at all admissible. Because the object of inquest panchanama is not to record any statement of any witness, but to note down the condition of body of the deceased or victim. Whatever Mahadeo Bhanuse stated is a prelude to inquest panchanama. Mahadeo Ramchandra Bhanuse is not examined by the prosecution as a witness nor is examined by the defence as their witness. Further this panchanama (Exh.14/C) has gone on record and admitted by defence under Section 294 of the Cr.P.C. Therefore there was no question of examining Mahadeo Bhanuse by the prosecution. Admittedly, Mahadeo Bhanuse is not an eye witness to the incident. Nobody claims so i.e. neither the prosecution nor the defence. Admittedly, he had gone to attend his duty and after learning about the death of Kishor he had come to see the

body of Kishor in a natural course of events. Whatever he learnt indirectly from the people is his knowledge about the assault on Kishor, who (witness) was not present, and hence it is a hearsay information. The inquest panchanama (Exh.14/C) is recorded by the police officer, Shahupuri Police Station, C.P.R. Chowki in the Dead Body Room of C.P.R. Hospital and the most important part in the inquest panchanama is, there is a reference about A.D.R.No.0/02 as informed by Laxmipuri Police Station. Admittedly, therefore, the inquest panchanama was being performed not in a murder case but in a case registered as accidental death. The so called statement made by Mahadeo Bhanuse, being passed on hearsay information, could not have been treated as FIR. Secondly and most importantly, there is no substantive evidence that Mahadeo Bhanuse did make such statement before the panchas and police officer because Mahadeo Bhanuse is not at all examined as a witness. Therefore, no inference can be drawn as suggested by the defence viz. that the police were not knowing the names of assailants between 2.15 to 2.30. Consequently the inference, which the defence wants us to draw, that FIR is

concocted is also uncalled for and unwarranted and totally baseless. The inquest panchanama does not show that any of the eye witnesses, later on examined by the prosecution, was present at the time of inquest panchanama. Therefore, this inquest panchanama nor any of its contents can create any doubt about the prosecution case and all those submissions made by the learned advocates for the accused in that regard are required to be rejected outright.

15. Now coming to the evidence given by the eye witnesses. Anil Sadashiv Bhanuse (PW 7) is the first eye witness examined by the prosecution. His evidence was recorded in Court on 27.4.2003. At that time he was 17 years of age and at the time of incident he was in 9th standard. According to both the advocates for the accused, this witness is a got up witness planted by the investigating officer with the connivance of the persons from the victim side. Because the witness was taking his education in 9th standard at Shri Chhatrapati High School, Ghunaki and his school timing was 11 am to 5 pm. It was Monday. The school was open and working

on that day and the defence has not produced any evidence to show that Anil was absent in his school on that day. According to defence, the second circumstance is about improbability in respect of presence of this witness at the scene of offence and the cause given by this witness to be present at the spot and that cause is, his uncle Hambirrao told him to call deceased Kishor as Kishor had to go on his duty. This was about 11.30 a.m. and, therefore, Anil went in search of Kishor and found him standing in front of Panshop. The learned advocates for the accused contended that if going on duty regularly is a job of Kishor and when Kishor himself was alert, then there was no necessity for Hambirrao to alert Kishor in that regard or to give reminder in that regard or to send Anil in search of Kishor at a time particularly when Anil was supposed to be in school. The third improbability in the evidence is, the detail lengthy FIR given by Anil, a boy of 17 years of age, with all the particulars of earlier financial transaction between deceased Kishor and Kashinath. According to defence, all those particulars could only be given by one who was thoroughly acquainted with the facts and, looking

to the age of Anil, it was impossible that he would give so many details.

16. Second eye witness is P.W.8 Bharat Sid. He has stated that he knows all the parties. Accused No.1 had a panshop in Shivneri Chowk of Ghunaki and Kashinath had started his panshop 10/15 days before the murder of Kishor. The incident, according to him, took place on 8.7.2002 at 11.30 a.m.. He had gone to the dispensary of Dr.Khatal at about 11.30 a.m. He waited in the dispensary for some time. He saw all the four accused with swords assaulting Kishor near the Panshop of Jagannath Shinde. He went running to the house of Kishor to inform about the attack to the inmates of the house. Kishor's grand mother was in the house. He asked her about Pramod and when he was told that Pramod had gone towards Chavadi, he went to Chavadi. But ultimately he gave up the search of Pramod and came back to the panshop of Jagannath Shinde. By that time, many persons gathered there. Kishor was lying facing towards ground. His skull was fractured, blood was oozing from it and brain had come out. Somebody brought the rickshaw. Kashinath Sid, Ranjit Patil and

Avinash Harale took Kishor to C.P.R. hospital and at that time Madhukar, the uncle of Kishor, was present there. At 4.00 p.m. he learnt that Kishor died before he reached to Hospital. In the cross examination he pleaded ignorance about the dispute between the accused No.1 and Kashinath about the panshop. He admitted that on his own accord he did not go to the police patil to inform him about incident. His statement was recorded in the evening on the same day of incident. But in the next sentence he corrected himself and stated that it was recorded on next day i.e. on 9th. There is nothing more in his cross examination.

17. The next eye witnesses examined by the prosecution is P.W.12 Madhukar Ramchandra Bhanuse. The person present at the inquest panchanama was Mahadeo Ramchandra Bhanuse). This witness is also the uncle of Kishor. He is an agriculturist. He stated that 15/20 days before the incident Kashinath had started a new panshop near the shop of accused No.1. Jagannath Shinde also had his panshop in that area. He used to go to the shop of Jagannath to smoke cigarette. The incident occurred on 8.7.02 between 11.30 and

11.45 a.m. He was proceeding towards the shop of Jagannath and was near the house of Balasaheb Anuse. He saw that accused Nos.1 to 4 were assaulting Kishor with swords. He questioned, whether they would kill his nephew. He tried to pick up a stone from that place and when the accused saw this, they ran towards the house of Vishnu Powar. Kishor was lying down on the main road in front of the shop of Jagannath. He had injuries on his skull, face and hand - near wrist. He was making movements. At that time Anil Bhanuse (PW 7) - a school going boy came there from Shivneri Chowk followed by Avinash Harale, Ranjeet Patil, Kashinath Sid and others. Then a rickshaw was fetched and witness himself, Avinash Harale, Ranjeet Patil and Kashinath Sid placed Kishor in rickshaw for taking Kishor to C.P.R. hospital and the witness Madhukar told the occupants of rickshaw that he would make arrangement and follow them on the motorbike of Arun Sid. Accordingly he reached C.P.R. hospital. There doctor declared that Kishor was dead. Thereafter his brother Mahadeo and others came. He identified all the accused. In the cross examination the witness admitted that he was in Central Reserve Police, that he did not

feel that the police should be informed immediately or that he should go to the house of Kishor to inform the inmates of the house of Kishor. He did not inform the father of Kishor. There were police attached to the hospital but there was no talk or discussion about the incident. He told Mahadeo how incident took place and the police drew inquest panchanama in the hospital in his presence. Then police asked this witness and Mahadeo how the incident took place and then body was sent for post mortem. The witness further stated that he saw the incident from the distance of 20 ft. when the accused were attacking Kishor. When he first saw Kishor, he was in standing position. But when the witness lifted the stone, Kishor fell down. He admitted that none of the accused charged on him when he shouted and he did not throw the stone on the accused who were running. An omission was brought on record of this witness that he has stated before the police that Anil came from Shivneri Chowk but it was not there in his statement. He admitted that when he lifted Kishor, his blood stuck to his shirt. But he did not produce his shirt before the police. There is nothing much more in his further cross

examination. Para 4 of the cross examination of this witness was attacked by the advocates for the accused firstly on the ground that there was no reason for this witness to not to accompany Kishor to the Hospital. Further, if according to this witness, he had told the incident to Mahadeo [may be defence refers to Mahadeo Bhanuse who is referred in the inquest panchanama but that is not certain]. However according to defence lawyers if the witness has admitted that he had told the police about the incident, viz he being the witness to the incident, then it was sufficient to set the police machinery in motion and it should be treated as FIR. Further non-seziure of blood stained clothes of this witness is also sufficient to create doubt about the presence of this witness at the spot.

18. Jagannath Shinde - the owner of panshop in Shivneri Chowk, Ghunaki is the another eye witness. He is P.W.13. He was knowing the deceased and all the accused. He has stated that on 8.7.02 at 11.45 a.m. he was at his panshop. Kishor came running holding his left hand by right side by the side of Shivneri Chowk followed by accused Nos. 1 and 4 with sword. When Kishor

came in front of his shop, accused Nos. 2 and 3 came there from the side of Mahadeo Temple and they were also armed with swords and all the four assaulted Kishor with their weapons. The witness closed his shop and went near Kishor. Kishor was lying in pool of blood. His brain had come out of skull. Somebody brought rickshaw. Then Avinash harale, Ranjeet Patil, Kashinath Sid placed Kishor in that rickshaw and took him to C.P.R. Hospital. When Kishor was lying he was making movements. From his cross examination, nothing at all fruitful is brought out by the defence. Some minor omissions were brought on record. viz. that he has stated before the police that Kishor fell down after he was assaulted by accused No.1, but this was not there in his police statement. He denied that Kishor was already dead when he was removed by rickshaw.

19. Next eye witness examined by the prosecution is Kashinath Mangu Sid. He is P.W.16. He is not only the eye witness but also the witness speaking about the motive. According to him, the accused No.1 had a panshop. He wanted to sell it and witness went to accused No.1 with Kishor and Sardar. The transaction was

finalised at Rs.31,000/- out of which Rs.5000/- were paid to accused No.1. Balance amount was to be paid by 20.6.02 and if not paid, earnest money was to be forfeited. Accused No.1 then gave key to this witness. However, two days thereafter, accused No.1 approached Kashinath told him that he did not want to sell the panshop and offered to return Rs.5,000/- . Kashinath expressed his inability to decide and told accused No.1 that it would be better to consult mediators Kishor and Sardar. Next day there was a meeting. But it was not fruitful. But two days thereafter, all the four accused called Kashinath to the house of Prabhakar Kurane. In that meeting Kashinath, his brother, deceased Kishor, Pramod and Sardar were present, so also Ashok Jadhav, Vilas Sid and Prabhakar. Kishor and Kashinath insisted that if the accused paid Rs.10,000/-, the matter could be treated as closed. Accordingly, the accused paid Rs.10,000/-.

20. Further P.W.16 Kashinath stated that 10 to 15 days thereafter Kishor and Kashinath went to Vadgaon and brought iron kiosk shop and kept it by the side of the shop of accused No.1 and, Kashinath started his panshop from 19.6.2002.

This enraged accused Nos.1 to 4 against Kashinath and Kishor. This is, therefore, a motive for all the accused to kill and murder Kishor.

21. Regarding actual incident, P.W.16 Kashinath stated that on 8.7.2002, he opened his shop at 7 a.m. Kishor came to Kashinath's shop at 11 a.m., purchased two sachets of gutkha and, while he was talking to Kashinath, the accused No.1 and 4 called Kishor. They were already standing in the square. By that time, Kishor's cousin Anil (PW 7) came there. Kishor went towards the house of Balu - accused No.4. Anil followed him. All three of them went towards the house of accused No.4 Anil, however, stopped. After some time, Kishor came running and went towards Mahadeo temple. Kishor had sustained injuries on the left hand and he was holding the injury by the right hand and he was going running in the direction of Mahadeo temple. It was a bleeding injury. Accused Nos. 1 and 4 were chasing him. Anil was also following them.

22. Thereafter Kashinath closed his shop and went towards Mahadeo temple. [It appears that by that time, assault on Kishor by all the four

accused was over, because witness does not say about this in his evidence]. Then Kashinath saw M-80 two wheeler which was driven by two unknown persons. Accused No.1 obstructed and stopped that M-80 two wheeler and asked the rider to give the vehicle to him. They declined. Accused No.1 gave fist blows on the stomach of rider Ramesh Suryavanshi and snatched the motorcycle from him. Accused No.1 started the vehicle. By that time accused Nos. 2 and 4 came there. They sat on the pillion seat and went towards the direction of Mangoba temple. Accused No.3 with sword in his hand came running and put a bicycle which was near the house of accused No.4 and went in the direction of Mangoba temple.

23. Thereafter Kashinath went to the spot where Kishor was lying in front of panshop of Jagannath Shinde. Kishor sustained injuries. His brain had come out but the movements were there. By that time Kishor’s uncle Madhukar (PW 12) came there. A rickshaw was called and, Avinash Harale, Ranjeet Patil, Kashinath, Madhukar placed Kishor in the rickshaw and took him to the C.P.R. Hospital. Madhukar (PW 12) told that he would arrange for money and will

follow them. In the hospital, the doctor examined Kishor and he was declared dead.

24. In the cross examination Kashinath admitted that when they took Kishor inside the hospital, the police were present there. The police asked Kashinath and he told them that they had brought Kishor and Kishor was assaulted. The police recorded whatever he told them and, thereafter Madhukar (PW 12) and other villagers came.

25. Regarding this particular admission both the learned advocates for the accused again contended that Kashinath was an eye witness of the incident and whatever he narrated to the police, as stated above, becomes the FIR and this would be first in order in time because by that time Anil (PW 7) did not reach the police station. The witness also stated that at the time of inquest panchanama the police asked him how and where the injuries took place. Kashinath also questioned about the transaction with accused No.1. He admitted that there was no written agreement between them. Further he admitted that he used to open his shop at 7 a.m.

and close it at 11 or 11.30 a.m. and again open it at 1.30 p.m..

26. Much stress was laid by both the advocates for the accused upon this statement and it was contended that if Kashinath used to close his shop at 11 or 11.30 a.m., then it was impossible for him to witness the assault. Because, according to them, the assault took place at 12 ‘O’ clock.

27. In his cross examination, Kashinath admitted that he had a small Adkitta i.e. nutcracker in his shop. But he did not feel that he should immediately follow Kishor with adkitta to save Kishor from the attack of all the four accused who were carrying weapons like swords. Then Kashinath admitted that his shop had rolling shutter and two shutters. He first lowered the shutter and shut those two shutters and locked them and then went to see what was happened to Kishor. This according to the advocates for the accused is the most unnatural conduct on the part of Kashinath. In fact, defence should thank the witness for spending valuable time in pulling down the shutters and closing down the shop.

Kashinath does not testify about the actual main assault only because he spent valuable time in closing his panshop. If he had not closed the shop and followed Kishor, then he would be the best eye witness in the assault. Both the advocates for the accused failed to see that because Kashinath was busy in closing his shop meticulously, he could not be an eye witness to the incident. Therefore, the criticism made by the learned advocates for the accused on the evidence of Kashinath is of no use. He acted in a natural manner. It was because of installation of and starting of his panshop, Kishor was attacked and, therefore, his first concern was to protect his shop. And, therefore, he chose to close his shop first. There is nothing unnatural in his behaviour.

28. It will be clear from the aforesaid discussion that there are five eye witnesses to the incident. They are Anil Bhanuse (PW 7), Bharat Sid (PW 8), Madhukar Bhanuse (PW 12), Jagannath Shinde (PW 13) and Kashinath Sid (PW 16). The incident has occurred in broad day light in a chowk on the road where there was traffic. According to the advocate for the

accused, there was no eye witness to the incident and everything is fabricated by the police. We are totally in disagreement with this submission. Presence of eye witnesses is most natural in the case. It is not that, the murder took place at a secluded place far away from the locality or vasti, nor it is a case that murder took place in the midst of night where nobody would have been present. Therefore, this submission of the advocates for the accused that there was no eye witness to the incident is required to be rejected totally.

29. So far as five eye witnesses are concerned, only Kashinath has stated that deceased Kishor was his friend. That is not the reason to disbelieve his testimony. We have stated that if at all the witnesses are planted by the police, the Kashinath would have been the first witness to narrate about full assault. But his evidence is that he saw Kishor running with injuries to his hand from the house of accused No.4. This given credibility to his testimony. Other three eye witnesses are also natural witnesses and they have no reason whatsoever to falsely implicate the accused.

30. So far as witness Anil Bhanuse (PW 7) is concerned, according to the advocate for the accused, his presence is unnatural. Because if his school going hours are from 11 am to 5 pm and he has not attended the school on that day, the school register about his attendance should have been produced by the police. The statement of school teacher or class teacher should have been recorded that he was absent in school on that day. This has not been done by the police. Second criticism regarding presence of Anil (PW.7) is that if Kishor had to attend his duty, there was no necessity for his father to send Anil to remind Kishor in that regard. But according to the advocates for the accused, giving message by Hambirrao through Anil to Kishor in this regard is an excuse invented by the investigating agency to show presence of Anil at the time of incident. Third criticism about his evidence is that even though he is a boy of 17 years of age, he had given detailed FIR running into five pages wherein all the particulars of the so called transaction between Kashinath and accused No.1 and intervention of

Kishor are reflected. Therefore, these three things create doubt about veracity of this witness.

31. We find some justification in these criticisms and We may not accept the evidence of Anil as eye witness, but that does not create any doubt or suspicion about the story of prosecution that these four accused attacked Kishor. This fact proved beyond reasonable doubt by the evidence of remaining four eye witnesses whose evidence we have discussed above. There are no reason to discard their testimonies.

32. The advocates for the accused also tried to make a mountain of mole-hill. They hampered upon one aspect of the prosecution case repeatedly. Anil and other eye witnesses have stated that when they saw Kishor lying on the spot, he was making movements. According to the learned advocates for the accused, if the assault on Kishor was so severe and serious, he had to die instant death. Reason for witnesses to make improvement in this regard, i.e. Kishor was making some movements, was an attempt on the part of prosecution to explain why the police were not

called immediately.

33. It appears from the tone and tenor of the arguments from the advocates for the accused that, according to them, if Kishor had suffered injuries, then witnesses should have themselves decided to whether he was dead or alive and, if he was dead, according to the opinion of the witnesses, he should have been allowed to lie there till arrival of the police, then there was no necessity to remove Kishor to the hospital. This is most unnatural submission made. The witnesses cannot be and are not supposed to act as an expert in medical field. They are not supposed to declare a person dead by external signs. If a injured person is seen, the first duty and job of the witnesses is to remove him to the hospital and let the doctor decides whether he is dead or alive. If he is alive, the medical help can induce life in him if possible. The conduct of these witnesses that they immediately called rickshaw and took Kishor to CPR Hospital is most natural. They were not supposed to treat Kishor as dead and allow him to die his own death without any medical care. If they had done this, they would have guilty morally and legally by

allowing a man to die without rendering any medical assistance. Therefore, stating in cross that Kishor was making some movements cannot be considered as an improvement. Nothing is gained by making such improvement by the prosecution, if at all it is an improvement.

34. Advocates for the accused also contended that all those persons assembled at the scene of offence after seeing Kishor lying in the pool of blood did not accompany Kishor to the hospital immediately. This was particularly with reference to P.W.12 Madhukar, who did not accompany Kishor in rickshaw. But Madhukar (PW 12) stated that he would arrange for money and would follow them in the hospital. We failed to understand what is wrong if Madhukar want to fetch money first before going to the hospital. Advocate for the accused contended that the CPR Hospital was the Government hospital where no money was required. This is totally an absurd argument and has to be outright rejected without further consideration.

35. About the statement in inquest panchanama being the FIR, inquiry at the time of inquest and

information received by the police as FIR and statement made by Anil to the police (Exhibit 35) as FIR, many submissions were made by the learned advocates for the accused. We have already considered the aspect of inquest panchanama. The word "FIR" is used under Section 154 of the Criminal Procedure Code. Section 154 (1) says :-

> "Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant.... ....."

It will be clear from the aforesaid legal requirement that if five police constables are deputed to make an inquiry into an offence at five different places far away from the police station and each one of them comes to know some part of story, then each of such information received by every police constable cannot be treated as a FIR. No judicial precedent in this regard or in support of such proposition was cited before us. As per the requirement of

section 154 of the Cr.P.C. information relating to the commission of cognizable offence, if given orally to an officer-in-charge of a police station, has to be reduced into writing or has to be reduced into writing under his direction. Therefore, police coming to know at the time of inquest panchanama something about the incident, the inquest being held at Dead Body Room of the CPR Hospital, then such information cannot be treated as FIR and need not be treated as FIR. Therefore, this submission has to be rejected.

36. It is true that We have not relied upon the testimony of Anil for the reasons stated above. Consequently, the FIR lodged by him may not be of any help to the prosecution. But that is not the end of matter, nor the prosecution story has to be rejected for want of FIR. FIR (Exhibit 35) can be treated as previous statement of Anil (PW 7) given to the police.

37. Out of the four eye witnesses, Kashinath (PW 16) and Jagannath (PW 13) are running their panshops. They had stated that they used to open their panshops at 7 a.m. and close at 11 or 11.30 a.m. According to defence, if that is so,

they could not have been the witnesses to the assault, because there was no reason for them to remain in their shops after 11.30 a.m. This argument is devoid of any substance. Firstly, there is nothing on record to show that deceased was assaulted at 12.00 p.m. sharp or 1.00 p.m. sharp. The incident occurred at Ghunaki where people are not conscious in time as the people in Bombay. There is not much gap between 11.30 when these witnesses used to close their shops and the time of the assault and, there is nothing unnatural in their evidence. Their presence at their own shops is most natural.

38. This is therefore a case where the evidence of four eye witnesses is sufficient to hold the accused guilty, as rightly done by the trial Court. Apart from this, whatever evidence is there on record, it needs to be discussed at this stage.

39. The prosecution examined P.W.11 Vijaykumar Narsungale to prove the extra judicial confession of accused No.2 Babasaheb. He is residing at Chikurde. He was knowing accused Nos.1 to 3 as the house of grand mother of the

accused is near his house. He has stated that he met accused No.2 on 8.7.2002 at about 8 p.m. He had come to Chikurde. Accused No.2 accompanied by one more person. The witness asked accused No.2 how he came at that time and, the accused told him that they had injured Kishor Bhanuse and had come there. We are not inclined to believe this extra judicial confession at all. There is no reason for accused No.2 to confess to witness (PW 11). Their relations are not closed nor P.W.11 is a man of confidence. He is living in different village. Therefore, this evidence has to be rejected.

40. The learned APP contended that the ocular evidence of the four eye witnesses is strongly supported by the evidence of discovery of weapons. A sword is recovered from accused No.1. It is blood stained sword. A sword is recovered from accused No.3. It is blood stained sword. Then blood stained clothes of accused No.3 are also recovered and also of accused No.1. Similarly blood stained swords are recovered from accused Nos.4 and 2. The accused Nos.1 and 3 were arrested on 25.7.2002 and accused Nos.2 and 4 were arrested on 20.5.2002. And these

recoveries were immediately thereafter.

41. Regarding all this evidence and recovery of weapons and clothes, the learned advocates for the accused contended that the incident is dated 8.7.2002 and it is improbable that the accused would put on their blood stained clothes even after 17 days or 13 days of the assault. Regarding recovery of weapons under Section 27, the learned advocates for the accused contended that the weapons were recovered from open places accessible to all or known to all and, therefore, the evidence of recovery of weapons is of no use. Thirdly it was also argued that weapons were not sealed and, therefore, the C.A. report was of no use to the prosecution.

42. Even if the aforesaid submissions of the advocates for the accused and their challenge to the evidence of recovery are accepted, there is still more evidence to connect the accused with the crime and i.e. the evidence of P.W.19 Ramesh Ananda Suryavanshi whose M-80 Babaj was snatched by the accused to good the escape from the scene of offence.

43. P.W.19 Ramesh Suryavanshi stated that he owns two wheeler M-80. On 8.7.2002 at about 11.03 or 11.45 his cousin Bajarang Chougale was to catch a bus at Wather, for going to Satara and, therefore, both of them were going on by his M-80 two wheeler. When both of them came to Shivneri Chowk of village Ghunaki and took a turn to go towards Mahadeo temple, at that time accused No.1 Raghunath came in front of his M-80, stopped the vehicle and accused No.1 asked to give M-80 and when witness refused, accused No.1 gave a first blow to the witness on his face. At that time Barajan was riding M-80 and the witness was sitting on pillion seat. When Bajarang questioned accused No.1 why accused No.1 has given fist blow to the witness, he was also beaten by accused No.1. Then both of them got down from the vehicle. Accused No.1 Raghunath took the vehicle and started to go towards Mangoba road. After going some place, accused No.1 stopped the vehicle. Two persons came there. The clothes of both of them were stained with blood and each of them was holding sword. They sat on pillion seat and all three of them went towards Mangoba road. They wee chased by P.W.19 and Bajarang but in vein. The passers

told the witness and Bajarang that accused No.1 went by Mulankhadi road and, thereafter, witness and Bajarang went to the house of accused No.1 and saw that his M-80 vehicle was parked in front of the house of accused No.1. Witness asked one of the inmates of the house to give key of vehicle. Accordingly the key was given to him. He identified the accused No.1 in Court. The cross examination of this important witness is very cryptic and short. He denied all the suggestions that he is deposing falsely at the instance of Kashinath.

44. It will be clear from this evidence of P.W.19 that in fact he has nothing to do either with the side of victim or against the accused. He is most natural witness and since there is no cross examination worthy of consideration, his evidence has to be accepted as having gone unchallenged. The evidence of this witness proves that accused No.1 wanted to run away from the spot, he took the vehicle forcibly, then he joined two more persons, whose clothes were stained with blood and each of them was holding sword. It is true that these two persons were not identified by this witness. But that doesn’t

matter.

45. Therefore considering the entire case, we have no alternative but to accept the case of the prosecution. The conviction of the accused awarded by the trial Court has to be upheld and maintained. There is absolutely no reason to allow this appeal. Hence, we pass the following order :-

:ORDER:

The appeal is dismissed.

The conviction and sentence awarded by the trial Court to the accused is upheld and maintained.

Appeal is disposed of accordingly.

[D.G.DESHPANDE,J]

[SMT.NISHITA MHATRE, J]